

# memorandum

**DATE:** June 24, 2014

**TO:** Mark Scott, City Manager

**FROM:** Joy R. Forbes, Community Development Director  
Via: Carol D. Barrett, Assistant Community Development Director  
By: Tracy Steinkruger, Senior Planner

**SUBJECT:** AMENDING DEFINITIONS RELATED TO RESIDENTIAL USES AND  
DISCUSSION ON POSSIBLE INTERIM DEVELOPMENT CONTROL  
ORDINANCE AND DETERMINATION OF CATEGORICAL EXEMPTION  
UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PROJECT NO.  
14-0002411)

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**RECOMMENDATION:**

Introduce AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING SECTIONS 10-1-203, 10-1-602, AND 10-1-627 OF THE BURBANK MUNICIPAL CODE RELATED TO THE DEFINITIONS FOR RESIDENTIAL USES. (Exhibit A)

In addition, staff requests that the City Council provide direction on a possible Interim Development Control Ordinance (IDCO).

**BACKGROUND:**

In January 2014, the City Council considered and approved an updated Housing Element. The Housing Element includes a program required by the California Department of Housing and Community Development (HCD) that would require the City to amend the Burbank Municipal Code (BMC) to allow transitional and supportive housing as a by-right permitted residential use in all residential zones by 2017.

Discussion concerning the wide range of uses allowed in the R-1 Single-Family zone continued at Council meetings in January, February, and March. There was specific concern that certain existing permitted uses in the R-1 zone, such as unlicensed community care facilities, should be studied and possibly make changes to those uses or definitions that affect those uses, to the extent allowed by law. Concurrent with this discussion, staff received several inquiries about the ability of R-1 homeowners to rent their home and/or rooms in their homes to guests by way of vacation rental websites.

To address these concerns, the Council directed staff to pursue two options. First, Council directed staff to explore the possibility of adopting an IDCO, which would establish a moratorium on certain types of development permits while the Council considered a permanent ordinance addressing community care facilities. Second, Council directed staff to retain a consultant, with substantial knowledge of state and federal housing law, to assist the City in identifying legally permissible changes that would strengthen the City's single-family neighborhoods.

Staff retained the services of Barbara Kautz, from the law firm of Goldfarb & Lipman, to facilitate a discussion with the public about this topic. A community meeting was held on March 31, 2014

in the Community Services Building; approximately 50 persons attended the meeting (Exhibit B). This meeting was an agendaized Council meeting, which allowed Council members to be present for Ms. Kautz's presentation and hear comments from the public. Ms. Kautz outlined state and federal housing law and identified a series of legally permissible changes that would strengthen the City's protection of single-family neighborhoods. Ms. Kautz acknowledged that some of the possible changes could occur very quickly (modifications to the definitions in the BMC), while others would require more intensive study and preparation (developing operational standards for group homes).

At their regular meeting on April 1, 2014 the Council received a report about the possibility of adopting an IDCO. Staff also recapped the March 31<sup>st</sup> community meeting for the Council and the public. Council provided direction for staff to:

- Immediately prepare a Zone Text Amendment (ZTA) amending certain definitions related to residential uses;
- Prepare operational standards for unregulated group homes;
- Consider options for regulating the size of homes via the Conditional Use Permit (CUP) process; and,
- Examine the City's code enforcement process and fines.

Council also requested that staff bring back additional information on how an IDCO could be structured to address public concern.

A second community meeting was held on May 15, 2014 at the Buena Vista Public Library to review and solicit input on the draft definitions; approximately 30 persons attended the meeting. This meeting was also agendaized as a Council meeting, which allowed Council members to attend and hear comments from the public. The meeting was recorded and is currently available for viewing on the City's website. Staff and the consultant revised the definitions, which are outlined below, based on the feedback received at this meeting.

## **ANALYSIS:**

### **Boarding House**

Boarding house is defined in the BMC; however, it is not listed in the single-family, multi-family, or commercial use list. Therefore, the use is prohibited citywide by omission. The proposed ZTA would (a) amend the definition of boarding house to clarify that this use is not permitted in any residential zone, and (b) clarify in the single-family and multi-family use lists that the use is not allowed.

### **Existing Definition**

"Means a building containing a single dwelling unit, where lodging with or without meals is provided for compensation."

### **Proposed Definition**

Means a building where lodging for a period of at least 30 days is provided for compensation, where the residents are not living as a single common household (see definition of "Family"). Boarding houses are prohibited in all residential zones.

### **Family**

The City is prevented from limiting the number of people that live together, related or not, as long as they hold themselves out as a family by maintaining a single common household. The proposed ZTA would modify the existing definition of family to more clearly define “single common household.” Clarifying the definition of “Family” will better distinguish persons living together as a family versus other types of congregate living arrangements, which the City may be able to regulate in accordance with state or federal housing law.

### **Existing Definition**

“Means a group of persons who maintain a single common household, but who otherwise are not a Community Care Facility (whether licensed or unlicensed) as defined herein.”

### **Proposed Definition**

Means a person or group of persons in a single dwelling unit who maintain a single common household that:

1. Allows common access to and use of all living and eating areas, including areas and facilities for the preparation and storage of food within the dwelling;
2. Shares housekeeping and household expenses;
3. Rents no more than two individual rooms for compensation under separate leases or rental agreements, either oral or written, unless additional leases are required by a governmental funding program;
4. Does not require residents to move after a fixed period of time, except for limits imposed by a lease; and,
5. New residents are selected by all existing adult members of the household, with the consent of the owner if applicable.

### **Hotel/Motel**

Hotels and motels are currently permitted in the C-2, C-3, C-4, MDC-3, MDC-4, BCC-1, BCC-2, BCC-3, and BCCM commercial zones, but require a CUP if residentially adjacent. They are also allowed in the M-1, M-2, MDM-1, MDC-2, MPC-2, MPC-3, AP, and RR zones with a CUP regardless of if they are residentially adjacent. In addition, hotel is permitted in the MDC-1 zone with a CUP; motels are prohibited in this zone.

Hotels and motels are defined in the BMC. However, they are not listed in the single-family or multi-family use lists. Therefore, these uses are prohibited by omission. The proposed ZTA would (a) amend the definition of hotel/motel to clarify that this use is not permitted in any residential zone, and (b) identifies similar uses that are classified as hotel/motel.

For example, the proposed definition would prohibit a homeowner from advertising and/or renting out his/her home, or a portion thereof, for use as a bed and breakfast or vacation rental, so long as the length of stay is for a period less than 30 days.

The proposed definition does not address extended-stay hotels. Staff anticipates preparing a definition for extended-stay hotels as part of the second phase of this project.

### **Existing Hotel Definition**

“Means a building, or portion thereof, containing public guest or dormitory rooms without cooking facilities, used or designed to be used by guests for compensation.”

#### Existing Motel Definition

“Means one (1) or more buildings with motor vehicle parking space conveniently located near each unit, containing individual sleeping units used temporarily by automobile tourists or transients.”

#### Proposed Definition for Both

Means a commercial establishment or private residence (all or part) that provides guests with overnight accommodations, that do not exceed 30 days, in exchange for monetary compensation, and that do not otherwise meet the single common household component of the definition of “Family”. Commercial areas, meeting areas, dining areas, and other guest facilities that are open to both patrons and the general public may be included. Individual guest rooms may include limited cooking facilities, such as a microwave or mini-fridge, but not a full kitchen. Hotel uses include bed and breakfasts, short term rentals, and vacation rentals. Hotel uses of any kind are not permitted in residential zones.

#### Supportive Housing

Supportive housing is currently permitted in the R-3, R-4, MDR-3, and MDR-4 residential zones. It requires a CUP in the C-2, C-3, and C-4 commercial zones, which allows the City to review each application for neighborhood compatibility. The proposed ZTA would amend the definition of supportive housing to mirror the definition contained in state law.

#### Existing Definition

“Means permanent housing with no restriction on length of stay, which is linked to onsite or offsite services that help residents retain housing, improve their health status, and, when possible, obtain employment. Such services must be ancillary to the supportive housing and available only to people residing onsite and may include, but are not limited to, childcare, after-school tutoring, life skills training, and job training. Supportive housing may have a unit for an onsite manager. Supportive housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone.”

#### Proposed Definition

Has the same meaning as defined in Government Code Section 65582(f) and (g), and as amended from time to time. Currently, California Government Code Section 65582(f) states: “Supportive housing means housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.” Currently, California Government Code Section 65582(g) states: “Target population means persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 [commencing with Section 4500] of the Welfare and Institutions Code) and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.”

#### Transitional Housing

Transitional housing is currently permitted by-right in the R-3, R-4, MDR-3, and MDR-4 residential zones. It requires a CUP in the C-2, C-3, and C-4 commercial zones, which allows the City to review each application for neighborhood compatibility. The proposed ZTA would amend the definition of transitional housing to mirror the definition contained in state law.

### Existing Definition

“Means a dwelling unit or group of dwelling units for residents in immediate need of temporary housing. Each unit will be available to eligible residents for a minimum of six months and a maximum of 24 months. Transitional housing may have a unit for an onsite manager. Transitional housing must be linked to onsite or offsite programs such as childcare, after-school tutoring, career counseling, and other services that assist residents in finding permanent housing. Transitional housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zones.”

### Proposed Definition

Has the same meaning as defined in Government Code Section 65582(h) and as amended from time to time. Currently, California Government Code Section 65582(h) states: “Transitional housing means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.”

### Continued IDCO Discussion

Council directed staff to examine preparation of an IDCO that would require approval of a CUP in order to add bedrooms to a single-family home with the intention of preserving the character of Burbank’s single-family neighborhoods. This concept was reviewed with the community and refined. An alternative approach was discussed that would limit the amount of square footage that could be added to a single-family home. At the same time, the community was working with staff on approaches to improve the design of single-family homes. Similar concerns were emerging related to out of scale new construction or additions which did not respect the existing neighborhood character.

To try and preserve the character of single-family neighborhoods through an IDCO, there are several issues to keep in mind:

1. In interim ordinance is likely to be in place for at least a year so it needs to achieve its purpose without causing an undue hardship on a large number of property owners.
2. An interim ordinance needs to be straightforward enough that it can be easily understood.
3. The provisions of the ordinance must tie explicitly back to the problem that staff is trying to address.

There are multiple options available which are still being analyzed in greater detail as noted below. Options A through D are mutually exclusive. Item E could be included with any other option.

Option	Discussion
A. Reduce the current .4 Floor Area Ratio (FAR) to .35 or .3.	This is relatively straightforward but may prove unworkable on lots that are 6,000-7,000 square feet which comprise almost half of the lots in the city.
B. Prohibit second story additions or two story homes.	Allows new construction and renovations but ensures limitations on size given the current .4 FAR. May be difficult on smaller lots to achieve .4 FAR without a second story.

C. Allow new homes and additions provided that the total size of the house/garage is 2,500 square feet or less.	Avoids problem of limitations on lots 6,500 square feet and smaller which is about one third of the existing lots. On lots greater than 8,500 square feet (15% of all the lots in the city), this effectively reduces the FAR to less than .3. If 3,000 square feet is used as the limitation, it exceeds the current .4 FAR on all lots smaller than 7,500 square feet.
D. Instead of relying on a numerical formula, adopt a new requirement in the development standards for single-family homes which calls for a finding of neighborhood compatibility to be defined in relation to the existing development pattern (setbacks, height, etc.) on the same block as the new house or renovated house, and the facing block. Applicants must explicitly address the standards for neighborhood compatibility in their plans.	This option allows for greater customization according to varying circumstances. The compatibility analysis would be done by staff which would need training.
E. Require story poles for all two story houses outside the Hillside area when an applicant is seeking any form of discretionary relief from development standards.	Without story poles, it is not possible to completely gauge the impact of new construction on adjacent properties. Story poles would improve discretionary decision-making on new construction or renovations outside of the Hillside area which currently allows for story poles to be requested when a house is larger than 3,000 square feet.

Staff will continue to work on refining the concepts outlined above.

#### **Consistency with the Burbank2035 General Plan:**

Staff has reviewed the Burbank2035 General Plan and does not believe the proposed ZTA would conflict with the goals and policies previously adopted by the Council in regard to the provision of special needs housing. The proposed ZTA is intended to clarify existing definitions in the BMC; the proposed ZTA would not change the zoning for any of these uses. The City will continue to make reasonable accommodations in the zoning and other land use regulations when such accommodations may be necessary to afford disabled persons an equal opportunity to use a dwelling. The City will also continue to support nonprofit organizations, such as the Burbank Housing Corporation, in their pursuit of state and federal funds in support of housing construction and rehabilitation projects targeted for persons with physical and/or developmental disabilities.

#### **Environmental Review:**

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act pursuant to Section §15061(b)(3), where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

#### **Public Correspondence:**

Staff has received feedback on the proposed definitions from the Burbank Association of Realtors, which was taken into consideration as staff revised the proposed definitions following the May 15, 2014 community meeting. Staff has also received feedback on the proposed definitions from The Sober Living Network and Disability Rights Now, who expressed their concern that the proposed ZTA was intended to preclude or deter sober living facilities or supportive housing programs from locating in Burbank. Ms. Kautz, who was present at the Planning Board meeting on June 2, 2014, responded to the written correspondence by the

Disability Rights Center at the meeting. This meeting is available for review on the City's website. Any additional correspondence received will be forwarded to the Council.

**Planning Board Recommendation:**

The Planning Board considered the proposed ZTA at a public hearing on June 2, 2014 and recommended approval, as amended by the Board, by a vote of 5-0 (Exhibit D). Three members of the public expressed their concern about the proposed modifications to the definitions and possible impact on disabled persons and the provisions of housing for disabled persons. Planning Board members supported clarifying the definitions to better differentiate between a residential use versus a business operating in a residential zone and better protect the single-family neighborhoods. Planning Board members also expressed their support for language included in the definition of "Family" that allowed for additional leases in conjunction with a governmental funding program. Chair Jo suggested that the definition of "Boarding House" be modified to refer to "Family" versus "Single Common Household" because a definition for "Family" already exists in the BMC. The Planning Board members concurred with Chair Jo on the appropriateness of this change.

Staff additionally requested feedback from the Planning Board regarding the possibility of adopting an IDCO. The Planning Board concluded that there was insufficient evidence to justify adoption of an IDCO at this time. Doing so would be premature and could have lasting adverse impacts on the community's economic well-being. Planning Board members suggested that it would be better to focus on improving the design of single-family homes and character of single-family neighborhoods by modifying the BMC.

**FISCAL IMPACT:**

The proposed ZTA would have no fiscal impact to the City. The proposed ZTA would amend existing definitions in the BMC in order to make them clearer and/or mirror existing definitions found in state law. The zoning for these uses is not proposed to change and the way in which the Community Development Department administers the BMC would not change.

**CONCLUSION:**

In response to community concern expressed about the uses currently permitted in the R-1 zone, the Council directed staff to immediately pursue a ZTA that would make changes to BMC definitions that would help to better clarify and/or distinguish between certain types of residential uses and their zoning, consistent with state and federal housing law. Moving forward, staff will begin to examine operational and/or reporting standards that have been adopted in other jurisdictions to determine if and how those standards could be adapted for use in Burbank. Staff anticipates that this work will begin this summer. The public will continue to be involved to provide feedback on staff's proposal.

List of Exhibits	
Exhibit	Title
A	Ordinance
B	Community Meeting Presentation by Barbara Kautz – March 31, 2014
C	Public Correspondence
D	Planning Board Resolution No. 3309